

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1703, *Interest and Penalties*

A. Factual Basis

Subdivision (a) of California Code of Regulations, title 18, section (Regulation) 1703, *Interest and Penalties*, lists the sections in the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) that apply to the calculation of, imposition of, or relief from interest and penalties. Subdivision (b) of Regulation 1703 incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from interest. And, subdivision (c) of Regulation 1703 incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from penalties.

Section 6591.6 was added to the Revenue and Taxation Code (RTC) by Senate Bill No. (SB) 1028 (Stats. 2010, ch. 316), effective January 1, 2011. RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. Section 6591.6, subdivision (a) provides that the Board may compute interest at the modified adjusted daily rate only when “the payment of tax or the prepayment was made one business day after the date the tax or prepayment was due,” the person has been “granted relief from all penalties that applied to that payment of tax or prepayment,” and the person also “files a request for an oral hearing before the Board.” Section 6591.6 subdivisions (f) and (g) specify that section 6591.6 “shall only apply to electronic payments or prepayments of taxes” and “shall be operative only until January 1, 2016,” respectively. Therefore, the Board proposes to change Regulation 1703, subdivision (a), so that it lists the modified adjusted daily rate of interest provided in RTC section 6591.6 under California Code of Regulations, title 1, section (Rule) 100. The Board proposes to add a new paragraph (5) to Regulation 1703, subdivision (b), and renumber current paragraphs (5) through (7) as paragraphs (6) through (8), respectively, to incorporate and provide additional notice of the requirements for the Board to calculate interest at the modified adjusted daily rate prescribed by RTC section 6591.6. The Board also proposes to add a citation to RTC section 6591.6 to Regulation 1703’s reference note.

In addition, the Board proposes to:

- Insert a space between the letters “t” and “h” in the reference to “permitholder” in Regulation 1703, subdivision (a);
- Replace the upper case “S” with a lower case “s” in the word “Section” in Regulation 1703, subdivisions (b)(1)(C) and (c)(1)(A)1;
- Insert a period at the end of the second paragraph in Regulation 1703, subdivision (c)(1)(A)4;

- Change the semicolon to a colon in the second sentence of Regulation 1703, subdivision (c)(3)(D)(2); and
- Change the word “voluntary” to the word “voluntarily” to correct a typographical error in Regulation 1703, subdivision (c)(3)(D)2f.

The proposed changes to Regulation 1703 are appropriate for processing under Rule 100 because they make the regulation consistent with the addition of section 6591.6 to the RTC by SB 1028, make other minor grammatical edits, fix a typographical error, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

Rule 100 changes are proposed to Regulation 1703.

TEXT OF PROPOSED CHANGES

1703. Interest and Penalties.

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i>Subject</i>	<i>Sections</i>	
	<i>Interest</i>	<i>Penalties</i>
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6591, 6479.3
Deficiency determinations	6482	6484 (negligence) 6485 (fraud), 7051.2
Determinations - Sales tax reimbursement or use tax collected but not timely remitted		6597
Determination - failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of		6565, 7051.2
Offsets	6512	6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152,

		7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072
Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
<u>Modified adjusted daily rate</u>	<u>6591.6</u>	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) Interest.

(1) Interest Rates.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of §section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the

nearest full percent (or to the next highest full percent if .50%).

(D) . . . (unchanged).

(E) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(F) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Electronic Payments Made One Day Late.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.

2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.

3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.

2. "Board" means the members of the State Board of Equalization meeting as a public body.

3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

~~(56)~~ Refunds and Credits.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

~~(67)~~ Improper Use of Resale Certificate. . . . (unchanged).

~~(78)~~ Untimeliness Caused by Disaster. . . . (unchanged).

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in §section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. . . . (unchanged).

3. . . . (unchanged).

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) Late Return Forms Generally.

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) Determinations.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged):

1. . . . (unchanged).

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following:;

a. . . . (unchanged);

b. . . . (unchanged);

c. . . . (unchanged);

d. . . . (unchanged);

e. . . . (unchanged);

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2

(commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) . . . (unchanged)..

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(9) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.